UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

PEACEHEALTH MEDICAL GROUP

Employer

and **Case 19-RC-215038**

OREGON NURSES ASSOCIATION

Petitioner

DECISION AND DIRECTION OF ELECTION

Oregon Nurses Association ("Petitioner") filed a petition in the instant case under Section 9(c) of the National Labor Relations Act ("Act") seeking to add certain registered nurses working at the PeaceHealth Medical Group ("Employer" or "PHMG") Nurse Midwifery Birth Center ("Birth Center") to its existing bargaining unit of registered nurses[1] working at PeaceHealth Medical Center acute care hospitals in the Eugene/Springfield, Oregon area via an *Armour-Globe* self-determination election. The Employer maintains that the unit sought by Petitioner is not appropriate for the following reasons. First, the Petitioner is seeking to combine Registered Nurses ("RN"s) and Certified Nurse Midwives ("Nurse Midwives") at the non-acute Birth Center with RNs working at an acute care hospital. Second, the RNs working at the Birth Center do not share a community of interest with the Nurse Midwives. As such the Employer argues that the only appropriate bargaining units would be two separate bargaining units for the 170 RNs and for the 79 Advance Care Providers ("APC"s), which would include the Nurse Midwives working at the Employer's clinics in the Eugene/Springfield area.

A hearing officer of the Board held a hearing in this matter and the parties subsequently filed briefs with me. Petitioner has not ruled out proceeding to an election in any alternate unit if I find that the unit it proposed is inappropriate. On the first question, I agree with the Employer and find under the Board's Health Care Rule allowing a self-determination election, as proposed by Petitioner, would be inappropriate. On the second question, I agree with the Petitioner and find that the Nurse Midwives and the RNs who work at the Birth Center ("Birth Center Unit") are a readily identifiable group that could form a separate bargaining unit. I further find that the other clinical RNs and APCs do not share a sufficient community of interest with the Birth Center RNs and Nurse Midwives to warrant their inclusion into two separate bargaining units.

I. THE EMPLOYER'S OPERATION

PeaceHealth is a Vancouver, Washington-based non-profit health system providing medical care to communities in Oregon, Washington and Alaska. PeaceHealth's care delivery

[1] The description of the existing bargaining unit is all registered professional nurses employed by the Medical Center at each of its acute care facilities located in the Eugene/Springfield area as Staff Nurses and Charge Nurses, excluding nursing personnel who work in administrative and supervisory capacities and nurses who are members of the Sisters of Saint Joseph of Peace.

model is divided into two groups: PeaceHealth Medical Center ("PHMC") dealing with the hospital side and PeaceHealth Medical Group ("PHMG") dealing with the clinical side.

PHMC operates 10 hospitals including PeaceHealth Sacred Heart Medical Center at RiverBend ("RiverBend") in Springfield, Oregon and University District ("UD") in Eugene, Oregon. RiverBend is a tertiary care facility providing advanced services not only to the local community but for communities within 100-150 miles away. RiverBend employs more than 3,000 employees and has a Labor and Delivery ("L&D") floor. UD is a more limited acute care facility with a 24-hour emergency department and offers rehabilitation, inpatient medical and psychiatric treatment and employs several hundred employees in addition to almost 900 providers and medical staff. UD does not have an L&D floor and is located approximately five miles from RiverBend.

PHMC operates under the overall management of a Chief Executive who oversees two managers responsible for subject matter areas and a team of five senior-level managers with responsibility for specific inpatient acute care delivery services. Below the team are 20 additional leadership positions with management responsibility for various aspects of PHMC's acute-care hospitals. According to the Oregon Health Authority rules, acute care is 24 hours a day care for patients that are at medium or high risk of life and limb.

PHMG, which offers primary and specialty care in more than 40 disciplines at 70 separate locations, operates medical practices at eight different locations in the Eugene/Springfield area. These facilities provide specialized services in areas such as family medicine, dermatology and gastroenterology. In addition to physicians, each PHMG location employs two categories of medical providers, RNs and APCs. Many of the APCs are considered medical professionals and so are subject to the hospitals' medical staff bylaws when providing services in those facilities. The Birth Center, located in Springfield, Oregon is one of the PHMG locations. All of Eugene/Springfield PHMG medical practices are within 15 miles of the Birth Center.

Although both PHMC and PHMG's Chief Executives ultimately report to PeaceHealth's Chief Operating Officer, their organizational structure below that level is distinct with no overlap between leadership. A Chief Executive and a Chief Medical Executive maintain overall management responsibility for PHMG. These two positions oversee a team of five managers who are responsible for specific subject matter areas. A separate team of nine senior level managers oversee specific sub-regions within PHMG's care system including the two at issue for this case, VP Operations-Oregon Network and VP Medical Director Oregon Network who have six directors below them with management responsibility for clinics providing specialty services.

Under federal and state regulation, outpatient non-acute care facilities have a federal tax identification number which distinguishes them from an acute care facility. PHMG, offering non acute care, can apply for certain grants from the State or federal government which PHMC is preempted from doing. PHMC and PHMG have different budgets and neither entity has any input in forming the budget for the other entity.

The policies for the acute care facilities are different than those of the outpatient non-acute facilities. Further, each specialty clinic has its own subset of polices and clinical procedures that are different from those of the hospital.

A. The Birth Center

The Birth Center is located approximately half a mile from RiverBend and from the exterior resembles a house. The Birth Center is approximately 2000 square feet with three or four exam rooms, a phlebotomy room, an office supply room, two bathrooms, a kitchenette with lockers for all of the midwives and nurses and a shared common space in the back with computer stations.

The Birth Center offers the following services: midwife-attended births, prenatal and postpartum care, on-site lab, centering prenatal care, prenatal breastfeeding classes, childbirth education classes, 24-hour lactation support, weekly well-baby clinic and well-women exams.

There are nine Nurse Midwives and eight RNs working at the Birth Center under the direction of the Clinic Manager. The specific job titles for the petitioned-for unit are Nurse Midwife, Nurse Midwife Lead Interim, Program Coordinator Birth Center, RN Care Coordinator Outpatient, RN Clinic and RN Clinic Lead[2]. The RN Care Coordinator Outpatient works at the prenatal clinic for Lane County, which is not located at the Birth Center. The Clinic Manager also has oversight of the Women's Gynecological Services located at the University District Physician's Pavilion staffed by three physicians, one nurse practitioner and seven or eight other staff. Women's Gynecological Services does not provide any obstetric services. The Clinic Manager reports to PHMG's Director of Operations for Specialty Care who reports to PHMG's Vice President of Operations who in turn reports to PHMG's Chief Executive. None of these individuals have any supervisory role with PHMC.

Only patients identified as having a low risk pregnancy can give birth at the Birth Center. A patient identified as being high risk will go to the L&D floor at RiverBend, where the Nurse Midwife and an L&D RN will assist with the birth. The L&D nurses are currently represented by Petitioner. A pregnant woman cannot get a Caesarean, an epidural or fetal monitoring at the Birth Center. A patient with a low risk pregnancy can opt to deliver at RiverBend and if the low risk pregnancy becomes high risk during birth, the patient is transferred to RiverBend. Approximately three to 15 births take place at the Birth Center each month, which represents approximately 20 percent of the Birth Center patients. The other approximately 80 percent of births take place at RiverBend.

The Birth Center is open from 8:00 a.m. to 5:00 p.m. Monday through Friday and is normally staffed with one Nurse Midwife and one RN. If a patient eligible to give birth at the Birth Center goes into labor after hours or on the weekend, the Nurse Midwife and RN meet the mother at the Birth Center.

[2] The Petitioner is willing to stipulate that none of the employees in the petitioned for unit are statutory supervisors while the Employer is not willing to reach such a stipulation. However, the issue of supervisory status was not raised in the Employer's Statement of Position and as such it was not litigated.

1. Birth Center RNs

An RN has to have obtained an Associate's degree at a minimum, have a license in the State of Oregon and be certified in Basic Life Support and neonatal resuscitation. In addition, the RN should be a current International Board Certified Lactation Consultant or plan on becoming one in two years. A driver's license and a vehicle are required as well since the RN is on call and performs home visits. The hourly wage ranges from $32.30 to $48.48 with a shift 2 differential of $2.00 an hour and a shift 3 differential of $3.75 an hour. Although an RN testified she receives the shift 2 differential after 3:00 p.m., the record is silent as to what time the shift 2 differential ends and during what hours Shift 3 takes place. The number of on call shifts for an RN depends on the number of births scheduled at the Birth Center. While on call, the RN receives $3.75 an hour but if the RN receives a call (callback), then the rate of payment is time and a half for the hours worked. The callback can include attending a birth or answering phone calls. The expectation, which is the same for the Nurse Midwives, is to be at the work site within 30 minutes of receiving a call or to return a patient call within 20 minutes. RNs, like Nurse Midwives, receive a cell phone stipend of $50 a month.

The RNs spends 80 to 90 percent of their time assisting the Nurse Midwife with birth and postpartum care, of which 80 to 90 percent of that time is spent on postpartum care. Home visits are considered part of postpartum care and a RN will do at least one and sometimes three home visits for each new mother. The other time is spent on prenatal lactation counseling or helping the Nurse Midwife with vitals if a Medical Assistant is not available. As part of phone triage, when a patient calls, the RN does the initial assessment. The RN then discusses the issue with the Nurse Midwife to determine if the Nurse Midwife agrees with the care plan given by the RN or to find out if the Nurse Midwife suggests another plan of care.

Approximately all but one of the RNs has worked at RiverBend's L&D floor prior to working at the Birth Center. The remaining RN worked in Pennsylvania prior to working at the Birth Center. Approximately two or three part-time RNs who are regularly employed at the Birth Center pick up extra shifts at RiverBend, but while working there receive the hourly rate as specified in the collective bargaining agreement covering the acute-care RNs. One of these part-time RNs testified she works 90 to 95 percent of the year at the Birth Center as picking up extra shifts at the hospital is optional.

A Birth Center RN does not float or fill in for any other PHMG RNs and no other PHMG RN floats or fills in for the Birth Center RN. Record testimony is that none of the PHMG RNs have transferred to the Birth Center and none of the Birth Center RNs has transferred to the other PHMG clinics.

2. Birth Center Nurse Midwives

The Employer's job description states that a Nurse Midwife must be a graduate of an accredited nursing school, a graduate of an accredited school of Midwifery and in Oregon, a graduate of an accredited school for Nurse Practitioners (which can be a Masters or a PhD program). A Nurse Midwife must be certified in neonatal resuscitation. A Nurse Midwife also

delivers babies at RiverBend and, as such, is considered a medical provider which entails being credentialed according to hospital/medical staff bylaws. Nurse Midwives are classified as exempt employees and earn $50 to $80 an hour with the potential for their compensation to increase or decrease based on performance targets. According to the testimony of a Nurse Midwife, if she works an additional unscheduled shift, she can bill $450 whether the shift lasts two hours or thirty-six hours. According to the testimony of the HR Director, there is no overtime or extra shift payment. As the HR Director explained, Nurse Midwife rate of pay is based on several factors including years of experience and value measure which is based on patient surveys. A Nurse Midwife works two 10-hour clinic shifts and two 12-hour on-call shifts. A Nurse Midwife also takes a second call with the expectation that it is unpaid and that the Nurse Midwife will be available at a moment's notice to attend a birth if another midwife is needed. The Nurse Midwives usually schedule the second call among themselves.

At the Birth Center, Nurse Midwives see patients for prenatal care, well woman care (for former patients or because of a preference for midwifery care), problem visits, gynecological exams and triage visits. Although the record is not clear, while approximately 80 percent of the Birth Center patients ultimately deliver at RiverBend, it appears the actual time the Nurse Midwives spend at RiverBend constitutes a much smaller portion of patient care compared to the prenatal care provided at the Birth Center. During childbirth, the RN assists the Nurse Midwife. If the mother is scheduled or needs to go to RiverBend for delivery, the Nurse Midwife follows her. At RiverBend, the Nurse Midwife works with an L&D nurse.

Unlike the Birth Center RNs, full time Nurse Midwives receive $2500 additional compensation annually with a two year bank maximum of $5000 for continuing medical education and licensure. Nurse Midwives also receive 40 hours of time off per year in addition to their regular time off.

The Employer carries malpractice insurance on the Nurse Midwives but does not for the RNs.

Due to the nature of their specialized training, the Nurse Midwives do not fill in for other PHMG APCs and other PHMG APCs do not fill in for Nurse Midwives.

B. RNs and APCs Working at the Employer's Other Clinics in the Eugene/Springfield Area

The record has very little specific detail about the RNs and APCs working at the other PHMG clinics in the Eugene/Springfield area.

Like the Birth Center Unit, the RNs and APCs working in the clinics use EPIC, which is a third party electronic health record provider for hospitals and healthcare systems with two different types of records, outpatient and inpatient. All PHMG employees also attend the same orientation.

1. Clinical RNs

The Employer's job description for an RN working at a clinic requires among other things, graduation from an accredited school of nursing, a preference for having been employed as a registered nurse for a year, a current RN licensure in the State in which the nurse will practice and current Basic Life Support certification. However, there are community/location specific notes, including those for the Birth Center, in the job description. For example, at a behavioral health clinic, a minimum of three years' experience in mental health setting is preferred, knowledge of psychiatric medications and side effects and interest and ability to work with young people experiencing psychosis is specified. At the Oregon Bariatric Center, a Bachelor of Science in Nursing and Certification in Case Management is preferred while at a Senior Health & Wellness Clinic, Foot Care certification is preferred at date of hire.

Clinical RNs working in family practice, internal medicine and geriatrics participate in a home visit program. However, it is unknown if RNs in any other clinical facilities conduct home visits and how often the home visits for family practice, internal medicine and geriatrics are conducted. Besides nine triage nurses, the record is unclear as to whether the clinical RNs work hours outside of the clinic hours, are on call and whether they have to report to a clinic after hours for any reason.

All Clinical RNs receive the same Employer benefits.

2. Clinical APCs

An APC has attended graduate school and has either a Master's or a Doctorate. An APC can practice medicine in some capacity by writing orders, treating the patient or writing prescriptions. In addition, the APC has to be licensed by the State in which the APC is practicing. The Employer carries malpractice insurance on the APCs but does not for the clinical RNs. About half of the APCs have on-call responsibilities but the record is silent as to which ones do have the responsibility.

II. WHETHER THE BIRTH CENTER QUALIFIES AS AN ACUTE CARE HOSPITAL

A. The Federal and State Definition of a Birth Center

The Federal definition of a birth center is very similar to the way Oregon defines it.

> The Patient Protection and Affordable Care Act added a statutory definition of "freestanding birth center" to section 1905(l)(3) of the Social Security Act, 42 U.S.C. § 1396(l)(3).

The term "freestanding birth center" means a health facility that is not a hospital, where childbirth is planned to occur away from the pregnant woman's residence, that is licensed or otherwise approved by the State to provide prenatal, labor and delivery or postpartum care and

other ambulatory services that are included in the plan and that complies with other requirements relating to the health and safety furnished services by the facility as the State shall establish, 42 U.S.C. § 1396(a)(10)(A).

In Oregon, a freestanding birth center is defined as any health care facility, licensed for the primary purpose of performing low risk deliveries that is not a hospital, or in a hospital, and where births are planned to occur away from the mother's usual residence following normal, uncomplicated pregnancy, Oregon Administrative Rules Chapter 333, 333-076-0450.

Petitioner argues that the Birth Center and PHMC is a single employer because the Birth Center functions essentially as a unit of the PHMC and so by extension is also an acute care facility. Further, PHMC staffs its L&D department with Nurse Midwives, all but one of the Birth Center RNs currently work or have worked in RiverBend's L&D department and the Employer admitted on the record that it was the employer for nurses at PHMC and those at the Birth Center.

Although PeaceHealth is a corporation providing corporate services to its related companies, hospitals and clinics, the record clearly delineates the division between PHMC and PHMG. As such I do not find them to be a single employer. Because the Birth Center falls under PHMG, I do not find that the Birth Center and PHMC is a single employer.

Based on the aforementioned federal and State definitions of a Birth Center, I find that the Birth Center does not meet the definition of an acute care hospital.

B. The Health Care Rule

On April 21, 1989, the Board set out the appropriate units for acute-care hospitals in a rulemaking proceeding, reported at 284 NLRB 1515, *et seq.* The Health Care Rule, (29 CFR § 103.30 (1990), provides that except in extraordinary circumstances, only certain units are appropriate in an acute-care hospital: all registered nurses, all physicians, all professionals except for registered nurses and physicians, all technical employees, all skilled maintenance employees, all business office clerical employees, all guards, and all other non-professional employees. In the Rule, "acute care hospital" is defined as either a short term care hospital in which the average length of patient stay is less than 30 days, or a short term care hospital in which over 50 percent of all patients are admitted to units where the average length of stay is less than 30 days. 29 CFR § 103.30(f). The definition includes those hospitals operating as acute care facilities even if the hospitals provide other services such as long term care, outpatient care, psychiatric care, or rehabilitative care. The Rule does not specify whether it applies only to individual, freestanding hospital facilities, or whether it also extends to facilities that are integrated with acute care hospitals to varying degrees and are a part of the same network of acute care hospitals. As such, it appears that the Board has not specifically addressed this issue yet.

The Rule provides that a petitioning union can request a consolidation of two or more of the above units absent a statutory restriction and such a combined unit may be found appropriate. The Rule allows for exceptions to the Board's eight appropriate units in acute-care hospitals when there are existing nonconforming units.

C. The *Armour-Globe* Standard

A self-determination election, also referred to as an *Armour-Globe* election, is the proper method by which a union may add unrepresented employees to an existing unit. See, G*lobe Machine & Stamping,* 3 NLRB 294 (1937); *Armour and Co*., 40 NLRB 1333 (1942); *Warner-Lambert Co.*, supra. The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit, *Warner-Lambert Co.*, supra; *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). Further, a self-determination election may be appropriate regardless of whether the petitioned-for employees may be found to be a separate appropriate unit, *Great Lakes Pipe Line Co*., 92 NLRB 583, 584 (1950). The appropriateness of a self-determination election depends on the extent to which the employees to be included share a community of interest with the existing unit of employees and whether they constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *St. Vincent Charity Medical Center,* supra.

III. APPLICATION OF THE HEALTH CARE RULE TO THE PETITIONED FOR UNIT

Petitioner seeks a self-determination election pursuant to *Armour-Globe* to determine whether the RNs and Nurse Midwives at the Birth Center wish to be included in the existing unit of acute-care RNs working for PHMC. The main hurdle in the Petitioner's request is the fact that the Petitioner seeks to *Armour-Globe* non-acute care RNs into an existing unit of acute-care RNs.

Petitioner argues that the existing unit, formed before the Health Care Rule took effect is nonconforming because it includes 10 RNs working in the endoscopy department located at RiverBend Pavilion, a building separate from RiverBend. Neither the Petitioner's brief nor the record discloses the circumstances of why the endoscopy RNs were included with the acute care hospital RNs. Although RiverBend Pavilion is technically a PHMG facility, endoscopy is located in a provider based entity which is part of the hospital and these nurses respond to the hospital.

Petitioner, while not conceding that a mixed acute and non-acute RN only unit is necessarily "non-conforming" or that a hybrid acute/non-acute care unit would render the a unit non-conforming, argues that to the extent the Board considers a hybrid acute and non-acute unit "non-conforming," the existing unit is already non-conforming by virtue of the inclusion of the endoscopy RNs and therefore the addition of more RNs would be governed by the *Warner-Lambert Co.,* 298 NLRB 993, 995 (1990) criteria of "community of interest" and "identifiable segment."

Contrary to Petitioner's argument, a unit does not become non-conforming because it has RNs at an acute care center in a bargaining unit with RNs working at a non-acute facility. Rather to be considered a nonconforming unit it would involve the combination of at least two of the eight groups listed in the Health Care Rule. An all RN unit is a conforming unit. Additionally, there are only 10 RNs out of the 1,300 RNs in the bargaining unit who are not working at one of the acute care hospitals. This small fraction of the RNs who do not work out of RiverBend or UD is not enough to render the bargaining unit a non-conforming unit.

Citing *Child's Hospital,* 307 NLRB 90, 92 (1992), the Petitioner argues that the Board found that the Health Care Rule did not apply in a case involving an integrated bargaining unit of RNs working at an acute care hospital and a nursing home. However, the Board refused to apply the Health Care Rule for that particular institution because the operations of the acute care hospital and the nursing home were substantial, the entities were housed in a single building and another entity also located in the same building serviced both facilities. These facts are not present in the instant case.

Because the existing unit is a conforming unit consisting of acute care RNs and the petitioned for employees work at a non-acute care facility, I find that it would not be appropriate to direct an *Armour-Globe* election.

The Employer, relying on a community of interest argument, asserts the Birth Center RNs and Nurse Midwives do not share a community of interest with each other and thus the only appropriate bargaining units would be one with just clinical RNs and one consisting of only clinical APCs.

IV. APPLICATION OF THE FACTS TO THE BOARD'S *PCC STRUCTURALS, INC.* STANDARD

When examining the appropriateness of a unit, the Board must determine not whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is "*an* appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n.1 (2010) (emphasis in original) (citing *Overnite Transportation Co.*, 322 NLRB 723 (1996)).

In determining whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. *See Wheeling Island Gaming*, 355 NLRB 637. Additionally, the Board analyzes "whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from that unit to warrant a separate bargaining unit." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (emphasis in original). *See also Wheeling Island Gaming*, 355 NLRB at 637 n.1 (the Board's inquiry "necessarily proceeds to a further determination of whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant establishment of a separate unit"). In weighing the "shared and distinct interests of petitioned-for and excluded

employees […] the Board must determine whether 'excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (emphasis in original) (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016). Once this determination is made, "the appropriate-unit analysis is at an end." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

In making these determinations, the Board relies on its community of interest standard, which examines:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

PCC Structurals, Inc., 365 NLRB No. 160, slip op. at 11 (citing *United Operations*, 338 NLRB 123 (2002)).

Of note, in contrast to the Board's standard under *Specialty Healthcare & Rehab.Ctr. of Mobile,* 357 NLRB 934 (2011)"at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned for unit." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11. Rather, "parties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group will […] introduce evidence in support of their position." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

Additionally, when applicable, the above analysis should consider the Board's established guidelines for appropriate unit configurations in specific industries. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

A. Whether the Employees are Organized into a Separate Department

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See, *Check Printer, Inc*. 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA,* 331 NLRB 1289, 1289 and 1291 (2000). In this case, the Birth Center Unit falls under an

administrative grouping of the employer, which is Midwifery/Woman's Health, while none of the other clinical[3] employees do.

Therefore, I find that the organization of the Employer weighs against finding a community of interest between the Birth Center Unit and the other employees in the Employer's proposed-for bargaining units and further that it weighs in favor of finding that the employees in the Birth Center Unit share a community of interest sufficiently distinct from the interests of the employees excluded from Unit.

B. Whether the Employees Have Distinct Skills and Training

This factor examines whether the disputed employees can be distinguished from one another on the basis of skills and training. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar,* 349 NLRB 603 (2007); *J.C. Penny Company, Inc.,* 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

Although the fact that a clinical RN needs to be a graduate of an accredited nursing school and possess a current RN Oregon license weighs in favor of finding a community of interest between the Birth Center Unit and the Employer's proposed clinical RN unit, the Employer's additional requirements or preferences for specific locations including the Birth Center imply that the certain clinics require a more specific skill set. I find this factor at best is neutral in finding a community of interest between the Birth Center Unit and the Employer's proposed RN clinical unit.

The Employer's brief has a sentence stating that the specific educational and training requirements differ for each clinical discipline (for example, audiologists versus pharmacists) and that all of the APCs are required to satisfy advanced education requirements in their chosen field of study and to maintain appropriate licenses or accreditation. I find these generalized statements without anything more provide insufficient information for a meaningful comparison of education and training requirements between the clinical APCs and the Nurse Midwives. Lacking information as to what skills and training the other APCs have, I find that this factor weighs against finding a community of interest between the Nurse Midwives and the other clinical APCs. I further find that the distinct skills and training of the Birth Center Unit weighs in favor of finding that these employees share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

[3] Although the record mentions the Birth Center Clinical Manager oversees Women's Health in the University District Physician's Pavilion which includes two nurse practitioners, the record is silent as to their job description, job duties, wages and other terms and conditions of employment. As the testimony is clear that the Birth Center Unit does not interchange with any other APCs and vice versa, I do not find this potential common supervision to change my decision to exclude the clinical APCs from the Birth Center Unit.

C. Whether the Employees Have Distinct Job Functions and Perform Distinct Work

This factor examines whether the disputed employees can be distinguished from one another on the basis of job functions and performed work. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions.

Arguably all of the clinical RNs could be considered as having the same duties or performing the same basic function of patient care. The Birth Center RNs deal specifically with pregnant women and newborn babies and there is no evidence that these RNs work together as a crew with the other clinical RNs or that they perform one another's work. At most, job function is neutral in regards to a community of interest finding between the clinical RNs while the specificity of what the Birth Center RNs do weighs against finding a community of interest between the Birth Center RNs and the clinical RNs.

In its brief, the Employer asserts that PHMG employs "float" RNs who can fill in at different PHMG locations or specialties on an as-needed basis. However, the Employer also notes that given the specialization of some of the PHMG clinics, including the Birth Center, it is less likely that other PHMG RNs will fill in.

Lacking information as to what job functions the clinical APCs perform, I find that this factor weighs against finding a community of interest between the Nurse Midwives and the other clinical APCs. Further the distinct prenatal and postpartum specialization performed by the Birth Center Unit employees weigh in favor of finding they share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

D. Functional Integration with the Employer's Other Employees

Functional integration refers to when employees' work constitutes integral elements of an employer's production or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on some matters, have frequent contact with one another and perform similar functions is relevant when examining whether functional integration exists, *Transerv Systems,* 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact in the unit sought by a union, the existence of functional integration has less weight.

In its brief, the Employer asserts that there is a high degree of functional integration among the PHMG APCs because PHMG's care model is to provide patients with access to care from professionals from several different fields and to that end PHMG locations typically employ multiple categories of APCs at the same location. The example provided dealt with

classifications in the behavioral health category. As to regular employee interchange, the Employer claims that if specific disciplines among PHMG locations need a Nurse Practitioner Specialty on a short-term basis, PHMG could temporarily assign one from another clinic to fill in. There is no evidence either on the record or in the brief that the Nurse Midwives fill in for any specialty APC or that any of the specialty APCs fill in for the Midwives or that the Nurse Midwives have interaction with any type of frequency with the other APCs.

Citing *In re St. Luke's System, Inc.*, 340 NLRB 1171, 1172 (2003), the Employer argues that its operations are highly centralized and its more than 50 clinics are organized to function as a single unit. Contrary to the Employer's argument, the Board found that the employer in *In re St. Luke's,* supra, successfully rebutted the single facility presumption by showing that its clinics operated as a single network and were functionally integrated because, among other things, all of the job duties and skills were identical and there were frequent temporary and permanent transfers throughout the clinics.

The record is clear that the Birth Center Unit works together during the birth process and consults with each other about patient issues and concerns that arise during the course of a day. The record is also clear that the clinical RNs and clinical APCs have no functional integration with the Birth Center Unit and have no contact with them. I find this factor weighs against finding that the Birth Center Unit shares a community of interest with the other clinical employees and further that it weighs in favor of finding that the employees in the proposed unit share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

E. Whether the Employees Have Frequent Contact with the Other Employees

Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. *See e.g. Casino Aztar,* 349 NLRB 603, 605-606 (2007). As noted above, the Birth Center Unit works together during the birth of a baby and when a mother goes into labor after hours or on the weekend, the RN and Nurse Midwife both report to the Birth Center to assist in the delivery. Additionally, the RNs and Nurse Midwives communicate frequently with each other during the day about patient concerns. Furthermore, the RNs and Nurse Midwives share lockers and the common space where the work station computers are located.

I find there is no established contact between the Birth Center Unit and the other clinical employees, which weighs against finding that the Birth Center Unit shares a community of interest with the other clinical employees and further that this lack of established contact weighs in favor of finding that the employees in the Birth Center Unit share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

F. Whether the Employees Interchange with Other Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp*., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates,* 301 NLRN 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB,* 647 F.2d 1011, 105 (9th Cir. 1081). The record fails to reveal evidence of any Birth Center Unit interchange with the other clinical employees.

I find that the lack of demonstrated interchange between the Birth Center Unit and the other clinical positions weighs against a finding of community of interest and further that it weighs in favor of finding that the employees in the proposed unit share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

G. Whether the Employees have Distinct Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc*., 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation,* 221 NLRB 1145 (1996).

The Birth Center RNs and the clinical RNs receive similar wage ranges and are paid on an hourly basis. There is insufficient evidence to establish whether the Nurse Midwives and the clinical APCs share a similar wage range. The Birth Center RNs and the other clinical RNs receive the same Employer benefits while the Nurse Midwives and APCs receive most of the same Employer benefits with some differences depending on the classification. However, since the Birth Center Unit is separately supervised, does not interchange with any other PHMG employees and works in a physically separate area, I find this weighs more heavily against finding a community of interest with the other clinical positions and further that these differences weigh in favor of finding that the employees in the proposed unit share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

H. Whether the Employees are Separately Supervised

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn 11. Rather, more important is the degree of interchange, contact and functional integration. Id. at 607.

The Birth Center Unit is supervised by the Clinical Manager Midwifery/Women's Health. The record mentions that this Clinical Manager has oversight of the women's gynecological services located at the Physician's Pavilion at the University District and that two nurse practitioners work there. I find this sparse information which is devoid of specific descriptions of what the nurse practitioners actually do is insufficient to establish that the nurse practitioners working at the Physician's Pavilion share a community of interest with the Nurse Midwives as there is no other evidence of interchange, contact or functional integration. As such I find that the lack of common supervision weighs against a community of interest finding between the Birth Center Unit and the other clinical employees and further that this factor weighs in favor of finding that the employees in the proposed unit share a community of interest sufficiently distinct from the interests of the employees excluded from the unit.

V. CONCLUSION

In sum, I have determined that the unit sought by Petitioner is not appropriate. In doing so, I have carefully considered the Board's Health Care Rule and conclude that an *Armour Globe* election to add the unit sought by Petitioner to the existing bargaining unit is not appropriate because the record reveals that the petitioned-for employees work in a non-acute care facility while the existing bargaining unit covers RNs working in acute care hospitals. However, I conclude that the Birth Center Unit is an appropriate unit. In so finding, I have carefully weighed the community of interest factors cited in *United Operations,* supra, because the record establishes it is organized in a separate department, it has common supervision and its function is to provide care to pregnant women during childbirth and after the baby is born to the mother and child. The Birth Center Unit does not overlap with the other clinical employees sought to be included by the Employer, it is not functionally integrated nor does it have frequent contact and interchange with these other clinical employees. Accordingly, I find that the Birth Center Unit shares a community of interest sufficiently distinct from the interest of employees excluded from the unit.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[4]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Registered Nurses and Certified Nurse Midwives employed by the Employer at its PeaceHealth Nurse Midwifery Birth Center and Clinic located in Springfield, Oregon; but excluding all other employees employed at the PeaceHealth Nurse Midwifery Birth Center and Clinic, all other RNs including those employed at the Employer's acute care hospitals and clinics in the Eugene/Springfield area, all other Advanced Care Providers, administrative employees and guards and supervisors as defined in the Act.

There are approximately 17 employees in the unit found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Oregon Nurses Association.

[4] The Employer, PeaceHealth Medical Group is a State of Oregon corporation with offices and places of business in Eugene and Springfield, Oregon engaged in operating medical facilities and providing medical care. In conducting its operations during the last twelve months, a representative period, the Employer derived gross annual revenues in excess of $250,000. During the same period, the Employer purchased and received goods valued in excess of $50,000 directly from points located outside the State of Oregon.

A. Election Details

The election will be held on Wednesday, April 11, 2018 from 8:00 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:00 p.m. at an appropriate area at the RiverBend Pavilion located at 3377 RiverBend Dr., Springfield, Oregon.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 17, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, March 30, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election which will issue subsequent to this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board,

1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Seattle, Washington, this 28th day of March, 2018.

Ronald K. Hooks

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006